

**United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL**

Advice Memorandum

DATE: July 20, 2004

TO : Curtis Wells, Regional Director
Region 16

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: National Organization of Legal
Service Workers (Lone Star Legal Aid) 536-0150-7500
Case 16-CB-6595 536-2522

The Region submitted this case for advice as to whether the Gulf Coast Organization of Legal Services Workers (Local Union) or the National Organization of Legal Services Workers (National Union) is the 9(a) representative of a unit of support staff employees at Lone Star Legal Aid (Employer or Lone Star), and if so, whether the National Union violated Section 8(b)(1)(A) by ordering the Employer not to implement a layoff agreement negotiated by the Local Union and by demanding that the Employer remit withheld union dues directly to the National Union. We conclude that the Local Union is the 9(a) representative and that the National Union violated Section 8(b)(1)(A) by making both demands.

FACTS

Lone Star provides legal services to the poor in Texas. Lone Star came into existence in January 2002, when Gulf Coast Legal Foundation (Gulf Coast) merged with East Texas Legal Services (East Texas) and the Belton, Texas office of Austin Legal Services (Belton). The former Gulf Coast employees work at Lone Star's Houston, Galveston, Bellville, and Bryan offices (referred to collectively as Houston).

In 1979 and 1984, the Board certified the Local Union as the bargaining representative of a unit which included the Gulf Coast support staff.¹ The certifications identified the Local Union as the bargaining representative, and the National Union as the entity with which the Local was affiliated.

In December 1999, Gulf Coast and the Local Union executed their last collective-bargaining agreement. In

¹ The certified unit originally also included the Gulf Coast attorneys. In 1989, by agreement of the parties, the attorneys became a separate unit and have bargained independently from the support staff since that time.

Article 3.1, Gulf Coast recognized the Local Union "as the sole and exclusive bargaining representative" of its roughly 24 support staff employees. Article 4.3 required Gulf Coast to remit withheld dues and fees to the Local Union. The contract made no reference to the National Union.

In July 2002, after the Employer merger, Lone Star and the Local Union extended the 1999 contract through December 31, 2002. In September 2002, according to Local Union president Salvador Gonzales, the support staff at Houston voted internally to retain the Local Union and reject representation by the National Union in a single unit of former Gulf Coast and East Texas employees, thereby effectively disaffiliating itself from the National Union. In late December 2002, Lone Star settled a Board charge² by agreeing to recognize and bargain with the Local Union as the representative of the Houston support staff unit. The 1999 contract expired on December 31, 2002, but Lone Star continued to honor the checkoff authorizations executed in favor of the Local Union.

Since December 2002, Lone Star has been engaging in joint negotiations with the Local Union and the National Union for a contract or contracts covering its support staff employees at Houston, Belton and East Texas. The Local Union, through unit employees Gonzales and Versie Brooks, represents the support staff unit at Houston in the negotiations. Gonzales is chairman of the joint negotiating committee. The National Union, through East Texas employees Dianna Hope and Becky Hereford, represents the support staff unit at East Texas.³

Lone Star and the Local Union reached a separate, limited agreement addressing layoffs, transfers and recall rights of the Houston unit employees in May 2003. On July 29, the National Union ordered Lone Star not to implement the agreement. The National Union sent copies of this order to the joint bargaining committee, including Gonzales and Brooks. On August 4, Gonzales reminded Lone Star and the

² On October 4, 2002, the Local Union filed a charge in Case 16-CA-22259 alleging that the Employer violated Section 8(a)(1) and (5) by refusing to bargain. The Region concluded that the Local Union was the collective bargaining representative of the Houston support staff unit and that the Employer violated the Act as alleged.

³ It is unclear whether the Local Union or the National Union represents the Belton support staff unit in the negotiations, as that unit may have merged into the Houston unit in July 2003.

National Union in writing that the Local Union represents the support staff at Houston. Gonzales stated that the National Union "has not been authorized by [the Local Union] to communicate with you regarding bargaining between [the Employer] and [the Local Union]" and that the Local Union and the Employer "have been bargaining for several months in an effort to reach a new collective bargaining agreement."

On December 17, 2003, the National Union demanded that Lone Star remit all withheld union dues directly to the National Union, and thereby cease payments to the Local Union. On December 23, Gonzales again reminded Lone Star in writing that the Local Union represents the support staff at Houston, noting that "as the National Labor Relations Board recognized earlier this year, [the Local Union] has a labor contract with [the Employer]. ... [The National Union] has nothing to do with this" contract. On January 8, 2004, the National Union advised the Houston unit employees that Lone Star would begin placing their entire dues payment in escrow. Since January, Lone Star has placed the dues payments in escrow.⁴

ACTION

We conclude that the Local Union is the 9(a) representative of the Houston support staff unit. We also conclude that the National Union violated Section 8(b)(1)(A) by ordering the Employer not to implement a layoff agreement negotiated by the Local Union and by demanding that the Employer remit withheld union dues directly to the National Union.

⁴ On January 22, 2004, the Local Union filed a charge in Case 16-CA-23372 alleging that the Employer violated Section 8(a)(1) and (5) by failing to remit dues to the Local Union. After the Region decided to issue complaint, the Employer and the Local Union entered into a settlement agreement fully remedying Case 16-CA-23372, providing for the payment of dues to the Local Union. [FOIA Exemption 5

1. The Local Union is the 9(a) representative of the Houston support staff unit

The Local Union is clearly the 9(a) representative of the former Gulf Coast support staff employees working at Lone Star's Houston, Galveston, Bellville and Bryan offices. In 1979 and 1984, the Board certified the Local Union as the bargaining representative of a unit which included the Gulf Coast support staff. The certifications identified the Local Union as the bargaining representative, and the National Union simply as the entity with which the Local was affiliated. Also, in September 2002 the support staff at Houston voted internally to retain the Local Union and reject representation by the National Union.

The bargaining history in the support staff unit confirms the 9(a) status of the Local Union. In December 1999, Gulf Coast and the Local Union executed their last collective-bargaining agreement. The contract made no reference to the National Union. In fact, in Article 3.1, Gulf Coast recognized the Local Union "as the sole and exclusive bargaining representative" of its support staff. Also, Article 4.3 required Gulf Coast to remit withheld dues and fees to the Local Union, not to the National Union. In July 2002, after Lone Star replaced Gulf Coast and several other entities, Lone Star and the Local Union extended the 1999 contract, including the recognition and dues provisions, through December 31, 2002. In late December 2002, Lone Star settled Board Case 16-CA-22259 by agreeing to recognize and bargain with the Local Union, instead of the National Union. Since that time, Lone Star has been engaging in joint negotiations with the Local Union and the National Union for a contract or contracts covering its support staff employees at Houston, Belton and East Texas. In August and December 2003, while continuing to engage in joint negotiations, the Local Union reminded Lone Star and the National Union that the Local Union, not the National Union, represents the support staff at Houston. Thus, the Local Union, and not the National Union, is the 9(a) representative of that unit.

2. The National Union violated Section 8(b)(1)(A) by ordering Lone Star not to implement a layoff agreement negotiated by the Local Union and by demanding that Lone Star remit withheld union dues directly to the National Union

In light of the conclusion that the Local Union is the 9(a) representative of the support staff at Houston, the National Union violated Section 8(b)(1)(A) by ordering Lone Star not to implement a layoff agreement negotiated by the

Local Union and by demanding that Lone Star remit withheld union dues directly to the National Union.

A union violates Section 8(b)(1)(A) by engaging in conduct that has a reasonable tendency to restrain or coerce employees in the exercise of their Section 7 rights.⁵ Specifically, a union violates Section 8(b)(1)(A) by demanding that an employer recognize it and cease recognizing the legitimate 9(a) representative.⁶

In this case, Lone Star and the Local Union reached an agreement addressing layoffs, transfers and recall rights in May 2003. Lone Star and the Local Union implemented and relied upon that agreement. However, on July 29, 2003, the National Union ordered Lone Star not to implement the agreement. The National Union also sent copies of this order to the joint bargaining committee, including the two Lone Star unit employees representing Houston on behalf of the Local Union. The actions of the National Union had a reasonable tendency to restrain or coerce the roughly 24 Houston support staff employees in the exercise of their Section 7 rights to bargain collectively through a representative of their choosing. The National Union conveyed to those employees that engaging in collective bargaining through their Section 9(a) representative is a futile process, because any agreements reached by the 9(a) representative may be summarily broken at the direction of a separate labor organization. Clearly, employees receiving that message are less likely to exercise their rights under the Act, especially where the Local Union members had severed any formal affiliation ties they once had with the National Union. Thus, the National Union violated Section 8(b)(1)(A).

Similarly, Lone Star continued to honor the checkoff authorizations executed in favor of the Local Union after

⁵ Letter Carriers Branch 47 (Postal Service), 330 NLRB 667, n.1 (2000).

⁶ See Amalgamated Industrial & Service Workers Local 6 (X-L Plastics), 324 NLRB 647, 650 (1997) (union violated 8(b)(1)(A) by demanding that the employer recognize and bargain with it instead of the 9(a) representative), enfd. 172 F.3d 41 (3d Cir. 1998); Paper Manufacturers Co., 274 NLRB 491, 498 (1985) (same), enfd. 786 F.2d 163 (3d Cir. 1986). See also Joint Council of Teamsters No. 42 (Grinnell Fire Protection), 235 NLRB 1168, 1169 (1978) (no coercion under 8(b)(1)(A) where union not "seeking to force representation on an unwilling unit"), enfd. 615 F.2d 820 (9th Cir. 1980).

the contract expired on December 31, 2002. By signing checkoff authorizations, the employees have expressed their desire to have certain sums deducted from their paychecks and paid by Lone Star to the Local Union, their 9(a) representative. By "such action the employees have exercised their Section 7 rights to join and assist" the Local Union.⁷ Thus, those sums represent dues and fees to which the Local Union is entitled.⁸ However, on December 17, 2003, the National Union demanded that Lone Star send those amounts directly to it and, on January 8, 2004, advised the Houston unit employees that Lone Star would begin placing their entire payment in escrow. Indeed, since January, Lone Star has placed the payments in escrow, and sent the Local Union nothing. Hence, the National Union clearly restrained the unit employees in the exercise of their Section 7 right to assist the Local Union. Again, the National Union violated Section 8(b)(1)(A).⁹

Accordingly, the Region issue a Section 8(b)(1)(A) complaint, absent settlement.

B.J.K.

⁷ See Able Aluminum Co., 321 NLRB 1071, 1072 (1996). There is no evidence that the authorizations have expired or have been revoked.

⁸ Id. (9(a) representative entitled to dues properly deducted by employer from unit after contract expiration and, if cards expired or were revoked, employees entitled to deducted dues).

⁹ [FOIA Exemption 5